

## PURCHASE OPTION AGREEMENT

This Purchase Option Agreement ("Agreement") made and entered into this \_\_\_\_ day of June, 2003, by and between the IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, a subdivision of Idaho State Government, acting by and through its Director, Steve Allred, hereinafter referred to as Grantor, and EAGLE CREST IDAHO, LLC, an Oregon limited liability company, PO Box 1215, Redmond, OR, 97756, hereinafter referred to as Grantee.

WITNESSETH:

WHEREAS the United States of America ("United States") is currently the vested owner of approximately 1,600 acres of real property located in Shoshone County, Idaho, and consisting of forty-seven (47) parcels in Sections One & Two, Township 48 North, Range 2 East, Boise Meridian, and being real property acquired by the United States of America for remediation purposes associated with the Bunker Hill Superfund Site pursuant to 42 U.S.C. 9604 (j), and subject to transfer to the State of Idaho through multiple transfers, and hereinafter referred to as the "Transfer Property," and

WHEREAS Section 107A, Title 39, Idaho Code, provides that the Transfer Property shall be transferred to the Idaho Department of Environmental Quality (DEQ), for management and disposition, and

WHEREAS the Honorable Dirk Kempthorne, Governor of the State of Idaho, has established the following policies concerning the priorities for disposal of the Transfer Property by DEQ, to wit:

- (1) The property will be used to leverage job producing and property tax paying enterprises, and
- (2) The property will be used to give local units of government the opportunity to accept and utilize such property for public service facilities and purposes, or for transfers and trades for existing publicly owned property that could appropriately be used for economic development, and
- (3) The property will be used to provide opportunities for additional recreational and tourism activities.

Hereinafter referred to as the Transfer Guidelines, and

WHEREAS Grantor did in May and June of 1998, solicit from 117 entities believed to be in the business of constructing and operating golf course projects, requests for proposal to construct and operate a golf course project upon portions of the Transfer Property, and

WHEREAS Eagle Crest, Inc. ("Eagle Crest") was the only entity to respond to the request for proposals, and to express an interest in such a project, and

WHEREAS Eagle Crest is the current owner of Silver Mountain Corp., and is a regional developer of resort facilities, and

WHEREAS Eagle Crest has formed and is the sole member of Grantee and Grantee is desirous of developing a tournament class eighteen (18) hole golf course and residential planned unit development on a portion of the Transfer Property as depicted in Exhibit A, attached hereto and incorporated by reference herein, hereinafter referred to as the "Project Site," and

WHEREAS Grantor finds that the proposed project meets all of the Transfer Guidelines for disposition of portions of the Transfer Property.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, the Parties agree as follows:

1. REQUESTS FOR TRANSFER: Based upon the assertions and representations made by Grantee to Grantor concerning Grantee's sincere desire and goal to construct an 18 hole tournament quality golf course and residential planned unit development upon the Project Site (hereinafter described), Grantor has initiated a formal request to the United States through the Environmental Protection Agency (EPA) and the Army Corps of Engineers, for a portion of the 1,600 acre Transfer Property, of which a portion constitutes the Project Site as depicted in Exhibit A. Additional transfer requests will be made by Grantor to the United States in a timely manner for the transfer of additional parcels encompassing the remainder of the property comprising the Project Site. Grantor's requests are subject to the following understandings and exceptions:
  - (1) Central Impoundment Area (CIA): To the extent that the 18 hole golf course and PUD project may require the use of portions of Parcels 7, 15 and 17, commonly known as the Central Impoundment Area (CIA), Grantee is aware that Grantor is not in the position to currently take title to those parcels due to the need to negotiate performance standards with the EPA ("Performance Standards"), and that any use of the CIA would have to be the subject of a subsequent land transfer request and approval of the use by the EPA. Further, Grantee has been advised and is aware that any use of the CIA for a portion of the Project would have to be on a leasehold basis with fee title remaining vested in Grantor. Grantee is aware that Grantor will not request the CIA parcels (7, 15 and 17) until Performance Standards have been established. A separate leasehold agreement, outside of this Agreement, shall be created for those portions of the CIA intended for use by Grantee for a portion of the Project Site and will be negotiated and agreed upon.
  - (2) Stauffer Parcel: To the extent that the Project Site is depicted in Exhibit A as utilizing the Stauffer Parcel, Grantee is aware that the Stauffer Chemical Company has some vested interests in the subsurface stockpile of gypsum, and that Grantee will need to negotiate with Stauffer concerning those interests. Further, Grantee has been advised and is aware that the surface and subsurface of the Stauffer Parcel may be unstable even for uses related to a golf course. The parties acknowledge that a leasehold interest shall be created for the Stauffer Parcel in the same manner as provided for the CIA.
  - (3) Sweeney Pump Site and Gas Co. and Decontamination Station: A portion of parcel 13 as depicted in Exhibit A contains certain utilities. Said utilities and

equipment related to said utilities are not included as part of this Agreement. The land on, over and around said utilities and equipment are part of the Project Site. Additionally, a Decontamination Station on or near the Sweeney Pump Site shall remain property of the Grantor and may be removed by Grantor at its convenience or within 60 days of written request by Grantee after the exercise of the Purchase Option in this Agreement. If decontamination equipment and structures are not removed from the Project Site within the above-stated terms, said equipment and structures shall become property of Grantee.

- (4) Decontamination Station on Parcel 5, Gatehouse on Parcels 2 & 5: The Decontamination Station on Parcel 5, and Gatehouse on Parcels 2 and 5 and related equipment shall remain property of the Grantor after transfer from the United States. Said property shall be removed by Grantor at its convenience or within 60 days of written request by Grantee after exercise of the Purchase Option in this Agreement. If decontamination equipment, gatehouse and related equipment and structures are not removed from the Project Site within the above-stated terms, said equipment and structures shall become property of Grantee.
- (5) McKinley Avenue Frontage: To the extent that the Project Site, shown in Exhibit A, depicts the usage of the low lying properties fronting McKinley Avenue (Parcels 2, 3, 6, 13, 16 and the Stauffer Parcel as shown in Exhibit A), Grantor has included parcels 3, 6, and 16 in its initial transfer request, and will include parcels 2, 13, and the Stauffer Parcel in its second transfer request. Grantor is willing to include these McKinley Ave. frontage parcels in Grantee's Purchase Option, with the following understandings:
  - (a) Public Roadway: That Grantor intends to deed a portion of the parcels fronting McKinley Avenue to the City of Kellogg for public roadway and utility rights-of-way purposes. Road rights-of-way shall, in general, not exceed 60' except where 70' widths are required due to constraints of the land and except at the major north turning curve on McKinley Ave. where the right-of-way width shall be constructed to meet minimum traffic safety requirements but shall not exceed 100' in all cases unless agreed upon by Grantee.
  - (b) Mine Waste Pipeline: That a portion of the parcels on the southern side of McKinley Avenue is encumbered by an 18 inch mine waste pipeline.
  - (c) Public Ownership: That if any portion of the Project Site as depicted in Exhibit A remains vested in some form of public ownership, Grantee will be the beneficiary of restrictive covenants insuring the requisite degree of development control over the area as the main entrance of the Project Site.

Grantor has provided Grantee with a title commitment report evidencing that title to the property in the initial transfer is vested in the United States of America, subject to certain stated exceptions, and Grantee has been provided with copies of the relevant documents referred to in the stated exceptions. Additionally, Grantor will provide subsequent title commitment reports to Grantee for the property comprising the Project Site in Exhibit A. Said reports shall be provided to Grantee upon Grantor's request for transfer of said property from the United States to Grantor.

2. GRANT OF OPTION: Grantor does hereby grant to Grantee the option right to purchase ("Purchase Option") all of those portions of the Transfer Property defined as the Project Site as depicted in Exhibit A for the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration. Notwithstanding any other provision in this Agreement, Grantee shall not be obligated to exercise its Purchase Option. Prior to exercising its Purchase Option under this Agreement, Grantee shall have prepared by a licensed surveyor a legal description for the Project Site based upon the attached Exhibit A, which legal description shall be used by the parties to close the Purchase Option. The terms of the Purchase Option right shall be as follows:
  - a. Purchase Price of Project Site property: Upon exercise of the Purchase Option, Grantee shall pay to Grantor in cash at closing the sum of ONE DOLLAR (1.00).
  - b. Reimbursement: Within 60 days after receipt of the last deed by Grantor from the United States, which (with all prior deeds) encompass all property within the Project Site, Grantee shall reimburse Grantor in an amount not to exceed \$100,000 as determined by the aggregate of Grantor's direct and verifiable out-of-pocket expenses associated with obtaining the property within the Project Site as transferred from the United States to Grantor and conveying said property to Grantee. Reimbursement of direct and verifiable out-of-pocket expenses in excess of \$100,000 requires that Grantor provide Grantee with a description of additional work that Grantor desires to undertake, the estimated cost therefor and obtain prior written approval from Grantee for such work. Expenses will include surveying costs, direct land transfer team costs, land acquisition costs, direct legal fees, professional services fees and closing costs. Grantor shall provide an accounting of said final costs to Grantee a minimum of 30 days after receipt of the deed or deeds for those portions of the Transfer Property encompassing the Project Site. Grantee understands that Grantor shall not be obligated to incur costs in excess of the \$100,000 cap unless Grantor's direct and verifiable costs are reimbursed with prior written the approval of Grantee.
  - c. Closing: The Parties have agreed and have established a closing of escrow at Alliance Title and Escrow Corporation, Wallace, Idaho and have designated Alliance Title as the title insurance company for the transaction pursuant to preliminary title commitment report no. 204991184, dated June 11, 2001. Grantee understands that it shall be solely responsible for the cost of title insurance and for establishing the face amount of the policy. The normal administrative costs of closing shall be shared equally by the parties with the understanding that Grantor's share will be considered part of its out-of-pocket expenses subject to reimbursement pursuant to Section 2.b above.

- d. Term: The term of the Purchase Option shall be five (5) years commencing upon recordation in the Shoshone County records of the last deed conveying from the United States to Grantor all parcels that are within or partially within the Project Site. Within five (5) days after the recording of such last deed, Grantor shall provide Grantee with a conformed copy of each of the deeds conveying to Grantor such parcels within or partially within the Project Site.
  - e. Inspection: During the term of the Purchase Option, Grantee shall have the right to inspect the Project Site and any adjacent Transfer Property and conduct its due diligence.
  - f. Exercise: To exercise the right within the term of the Purchase Option, Grantee shall give Grantor written notice of intent to exercise the Purchase Option no later than 90 days prior to the expiration of the Purchase Option term, and shall deposit the necessary funds for closing into escrow. The exercise of the Purchase Option right shall be subject to the following conditions precedent:
    - (1) Annexation: Prior to exercise of the Purchase Option, Grantee must confirm final approval for annexation of the Project Site into the City of Kellogg. The parties acknowledge that such annexation has occurred.
    - (2) PUD Master Plan Approval: Prior to exercise of the Purchase Option, Grantee must seek and obtain final PUD Master Plan approval from the City of Kellogg.
    - (3) Design of Golf Course: Prior to exercise of the Purchase Option, Grantee must have completed conceptual design of the golf course to be constructed on the Project Site, and design for site issues pertaining to stormwater management acceptable to the City of Kellogg, in compliance with the Institutional Control Program (ICP).
    - (4) Alhambra Ski Village: Prior to exercise of the Purchase Option, Grantee or an affiliate or assignee of Grantee must seek and obtain final PUD Master Plan approval from the City of Kellogg.
    - (5) Phase One Alhambra Ski Village: Prior to exercise of the Purchase Option, Grantee or an affiliate or assignee of Grantee must seek and obtain final Plat approval from the City of Kellogg, which Plat includes the village entry road, new ski lifts, and expanded ski terrain,.
    - (6) Phase One Alhambra Ski Village Construction: Prior to the exercise of the Purchase Option, Grantee or an affiliate or assignee of Grantee must commence construction of Phase One Plat.
  - g. Assignment: Grantor agrees that the rights and obligations of Grantee under this Agreement are assignable to one or more parties capable of performing the terms and conditions of this Agreement, provided that the assignee or assignees must assume the obligations of Grantee so assigned.
3. RAILROAD ROW: Grantor agrees that it will make a best efforts attempt to, in a timely manner, acquire ownership of all Railroad Rights of Way (ROW) which is located within the boundaries of the Project Site but for purposes of this Agreement, the ROW is not

part of the Project Site. If ownership of said Railroad Rights of Way are secured by Grantor, such interest shall be conveyed to Grantee by Grantor, consistent with any requirements of Idaho law, provided Grantee exercises the Purchase Option. Such conveyance shall be by quit claim deed as provided in Section 5.a., at no additional cost or expense to Grantee with the understanding that Grantor will be reimbursed for direct and verifiable costs pursuant to and as defined in Section 2.b of this Agreement.

4. **EXISTING ROADS:** Where having the unilateral ability to do so, Grantor shall convey title, under the terms of this Agreement, of any and all portions of existing roads occurring within the Project Site. Grantor understands that Grantee must have the flexibility to move, realign, relocate or eliminate existing roadways when designing the Project. Said roads shall be considered unimproved land and shall become property of Grantee under this Agreement. Where having the unilateral ability to do so, Grantor shall permit use of roads adjacent to the Project Site property to Grantee and to individuals using the facilities developed by Grantee. Provided, however, that Grantee is aware that Grantor will require some reasonable form of public access for ingress and egress to properties adjacent to the boundaries of the Project Site.
5. **TERMS AND CONDITIONS OF PURCHASE:** In the event Grantee exercises the Purchase Option, the following terms and conditions shall be made part of a purchase and sale agreement unless otherwise agreed in writing by Grantor and Grantee:
  - a. **Quit Claim Deed:** That Grantor shall convey title to the Project Site property to Grantee by quit claim deed subject to all easement and encumbrances of record and of view.
  - b. **Institutional Control Program:** Grantee shall be responsible for compliance with the requirements of the Institutional Control Program (ICP) with respect to the Project Site. Grantee acknowledges it has received a copy of the documents comprising the ICP.
  - c. **Grantor's Indemnification:** Grantor understands and agrees that Grantee qualifies as a Bona Fide Prospective Purchaser, pursuant to and as defined in 42 USC §9601(40) and referenced in 42 USC §9607(r)(1), and as such shall not be liable under CERCLA as an owner or operator for a release of any hazardous substances disposed of at or released or transported from the Project Site before Grantee's acquisition of the Project Site ("Pre-existing Contamination") by the exercise of the Purchase Option. As the Transfer Property is transferred by the United States of America to Grantor, Grantor acknowledges that it will have certain ongoing operation and maintenance obligations with respect to the Transfer Property which operations and maintenance may impact the Project Site and Grantee's development on the Project Site. Concurrently with the delivery to Grantee of the quit claim deed to the Project Site, Grantor shall execute an indemnification agreement, consistent with the Idaho Tort Claims Act, Idaho Code Section 6-901 et. seq., agreeing to defend, indemnify and hold Grantee, its officers, employees, agents and owners and its successors and assigns harmless from any liability of any type or kind arising out of or relating to Grantor's actions or inaction with respect to the Transfer Property including its operation and maintenance obligations with respect to the Transfer Property including

Grantor's obligations under the ICP with respect to the Transfer Property but excluding therefrom the Project Site from and after the date of the delivery to Grantee of the quit claim to the Project Site.

- d. **Grantee's Indemnification:** Concurrently with the delivery to Grantee of the quit claim to the Project Site, Grantee shall execute an indemnification agreement agreeing to defend, indemnify and hold Grantor, its officers, employees and agents and its successors and assigns harmless from any liability of any type or kind arising out of or relating to Grantee's actions or inaction with respect to the Project Site including Grantee's obligations under the ICP with respect to the Project Site but nothing herein requires Grantee to defend, indemnify and hold Grantor, its officers, employees and agents and its successors and assigns, harmless from any Pre-existing Contamination provided that Grantor has not taken any actions to disturb or exacerbate the Pre-existing Contamination or failed to take action when action was required by the ICP or otherwise required by applicable law.
- e. **Operation and Maintenance (O&M) Requirements:** Grantee is aware that Grantor will own Transfer Property adjacent to the Project Site that drains down to and into the Project Site, and will require coordination of surface water controls and impacts. Grantee is aware that this may require the fencing of access to some areas outside of the Project Site. Additionally, Grantee is aware that O&M of all existing drainage channels, sediment basins, and drainage structures, hereinafter referred to as Existing Drainage Improvements, shall remain the responsibility of Grantor. Grantor agrees that Grantee shall have the right to utilize Existing Drainage Improvements for the purposes of drainage management for future improvements to the Project Site and that alterations to the Existing Drainage Structures are permitted for additional capacity, and aesthetics. Grantee agrees that Grantor has the right to review drainage plans and specifications proposed for the Project Site where Existing Drainage Improvements are planned for use in the Golf Course and PUD Project. Grantee agrees that Grantor has right to access Existing Drainage Improvements for purposes of O&M.
- f. **Reservations of Easements and Access:** Grantee is aware that the above-described O&M requirements will necessitate that Grantor reserve easements and rights of access over, under and across the Project Site but that the condition of the Project Site property will be repaired and or replaced if disturbed.
- g. **Sewer & Water Service:** Grantee is aware that the County of Shoshone has applied for a Rural Community Block Grant and EDA Grant for the purposes of constructing a 12" water main line and 12" sewer line along McKinley Ave near and through the Project Site, hereinafter referred to as the Grant Project. Grantee is aware that in order to obtain municipal water and sewer service for the golf course and PUD project, it will be at Grantee's expense to construct service lines from the lines installed under the Grant Project.
- h. **Main Project Entry:** Grantor is aware that Grantee intends to construct its main entrance of the Project Site along both sides of McKinley Avenue. As above-described, Grantor agrees to cooperate with Grantee to properly restrict and covenant

the McKinley Avenue frontage areas to be consistent with the theme of Grantee's project.

- i. Major Land Use Changes: Grantee agrees that Grantor, in addition to local governing agencies, shall have the right to review, and approve or reject with or without conditions, any major land use changes that deviate from the uses approved by the PUD Master Plan Approval for the Project Site related to a golf course and Planned Unit Development community for the Project and that this right of approval/rejection will be the subject of a restrictive covenant in the deed of transfer from Grantor to Grantee or in such other agreement as may be agreed upon by the parties.
- j. Reversionary Interest: Grantor shall retain a reversionary interest in the Project Site with reference to Grantee's failure to construct the golf course, and Grantor agrees to release that reversionary interest of record immediately upon commencement of the golf course based upon evidence of a performance bond if required by Housing and Urban Development Agency (HUD), under the Interstate Land Sales Registration Act, or a construction performance bond for the construction of the golf course with Grantor as the benefited party. Until released of record, the reversionary interest shall be appurtenant to and run with the Project Site property. In the event that Grantee has not commenced construction of the golf course within five years of the completion of the transfer of the Project Site property from the United States to Grantor, Grantor shall have the option to effectuate the reversion, or extend the construction commencement date to a mutually agreed upon and reasonably obtainable date.
- k. Environmental Improvement Trust Funds: Grantor has advised Grantee that Grantor seeks to generate trust funds for environmental improvement in the local area , and that Grantor will be requiring that every grantee of portions of the Transfer Property participate equally and fairly in contributing funds for such purpose by either lump sum or installment contributions. Said payments will be paid to a trust fund identified by Grantor consistent with any requirements of law. Grantee agrees to negotiate payment terms with Grantor prior to exercising this Purchase Option.
- l. Snow Staging Area: Grantee shall permit Grantor and the City of Kellogg the right to stage snow, at no cost to Grantor, on specifically designated and agreed upon areas of the Project Site prior to commencement of construction of the Golf Course and PUD project. Snow Staging areas shall be identified and agreed upon each fall season by and between Grantor and Grantee.
- m. Weather Station: Grantee agrees that access for the City of Kellogg to the existing Weather Station and its data, will be permitted by Grantee provided that the Weather Station is operational for as long as the Weather Station remains on the Project Site.
- n. Cooperation: Grantor will cooperate with Grantee should Grantee seek from the EPA prior to exercise of the Purchase Option a prospective purchase agreement or other form of agreement to give Grantee protection from CERCLA liability or otherwise providing Grantee with a comfort/status letter from the EPA. Grantor shall not be obligated to incur any costs or expense with respect to such cooperation. If Grantor should incur any such cost or expense, it shall be subject to reimbursement pursuant to Section 2.b above.



6. MISCELLANEOUS:

- a. This Agreement shall be binding upon the successors and assigns of the Parties.
- b. This Agreement shall be considered the entire agreement between the Parties and may only be modified in writing.
- c. The undersigned parties warrant that they have the authority to enter into this Agreement on behalf of the named parties.
- d. This Agreement shall be interpreted according to the laws of the State of Idaho.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective the date first above written.

**IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY**

A subdivision of Idaho State Government

By: \_\_\_\_\_  
Steve Allred, Director

**EAGLE CREST IDAHO, LLC**

An Oregon Limited Liability Company

BY: Eagle Crest, Inc., An Oregon Corporation  
Its Sole Member

By: \_\_\_\_\_  
Jerol Andres, President